

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

NIVALDO ALVES DESOUZA

CRIMINAL COMPLAINT

CASE NUMBER: 04-m00049-LPC

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about May 22, 2002 in Bristol county, in the

District of Massachusetts defendant(s) did, (Track Statutory Language of Offense)

having been denied admission, excluded, deported and removed while an order of exclusion, deportation or removal was outstanding, thereafter, was found in the U.S. without having received the express consent of the U.S. Attorney General prior to March 1, 2003 or the Secretary of the Dept. of Homeland Security subsequent to that date, in violation of 8 U.S.C. Sect. 1326(a); and did, for the purpose of obtaining a benefit to which he was not entitled, or anything of value from any person, willfully, knowingly, and with intent to deceive, use a social security account number, assigned by the Commissioner of Social Security on the basis of false information furnished to the Commissioner of Social Security by him or by another person,

in violation of Title 42 United States Code, Section(s) 408(a)(7)(A)

I further state that I am a(n) Special Agent, ICE and that this complaint is based on the following
Official Title

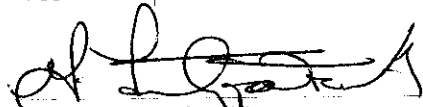
facts:

See attached Affidavit of Special Agent Glen Fitzpatrick.

Continued on the attached sheet and made a part hereof:

☐ Yes

☐ No


Signature of Complainant

Sworn to before me and subscribed in my presence,

Date

August 30, 2004


at

Boston, Massachusetts

City and State

LAWRENCE P. COHEN
UNITED STATES MAGISTRATE JUDGE

Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT OF SPECIAL AGENT GLEN FITZPATRICK

I, Glen Fitzpatrick, having been duly sworn, do hereby depose and state as follows:

1. I am a Special Agent with Immigration and Customs Enforcement ("ICE"), formerly the United States Immigration and Naturalization Service ("INS"), and have been so employed since January of 1992. My duties include investigating violations of Title 8 of the United States Code as well as Title 18. During the period of my employment, I have conducted numerous investigations of regarding illegal re-entry by deported aliens as well as other criminal violations.

2. The information set forth in this affidavit is based on my own investigation, my review of relevant ICE records, and information provided by others, including special agents of the United States Social Security Administration ("SSA"), Office of the Inspector General, Office of Investigations. This affidavit does not contain all information received during the course of the investigation but contains those facts that I believe are necessary and sufficient to establish probable cause for the issuance of the requested criminal complaint charging NIVALDO ALVES DESOUZA with illegal re-entry by a deported alien in violation of Title 8, United States Code, Section 1326(a)¹ and

¹8 U.S.C. §1326(a) reads in pertinent part: Any alien who - has been denied admission, excluded, deported or removed ...while an order of the exclusion, deportation, or removal is outstanding

social security account number fraud in violation of 42 U.S.C. Section 408(a)(7)(A)²⁵.

Illegal Re-entry

3. NIVALDO ALVES DESOUZA is a native and citizen of Brazil. On or about January 28, 2001, Defendant entered or attempted to enter the United States with a fraudulent visa at Los Angeles International Airport. Defendant was referred to Immigration Secondary Inspection and admitted that he had purchased the visa from a vendor on a street in Brazil. Defendant was served with a Notice and Order of Expedited Removal on January 29, 2001. On January 29, 2001, Defendant was in fact removed from the United States. The Verification of Removal evidences the Defendant's deportation, bearing the Defendant's fingerprint and his picture.

, and thereafter, enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his re-embarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General or the Secretary of the Department of Homeland Security has expressly consented to such alien's reapplying or admission...[is guilty of a crime.]

²⁴2 U.S.C. §408(a)(7)(A) reads in pertinent part: Whoever ... for the purpose of obtaining anything of value from any person, or for any other purpose- (A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person [shall be guilty of a crime.]

4. Thereafter, on or about May 22, 2002, the Defendant applied for a Massachusetts Drivers License. A review of the photograph for the license applicant and the photograph attached to the Verification of Removal reveal that the person receiving the driver's license and the person who was previously removed are one and the same person. Defendant's alien registration file does not contain any evidence that Defendant, while outside the United States, applied for or received the express permission of the United States Attorney General prior to March 1, 2003 or the Secretary of the Department of Homeland Security subsequent to March 1, 2003 to re-enter the United States since the date of his removal.

Fraudulent Use of Social Security Account Number Card

5. I am aware that the Social Security Act (42 U.S.C. 301 et seq.) was enacted in 1935 to provide for the general welfare by establishing a system of Federal Benefits. The Social Security Number ("SSN"), a nine digit number, was devised as a means to keep track of the earnings of individuals who work under covered employment. Along with the SSN, the Social Security Number Card ("SSNC") was created. SSNCs are issued with or without employment restrictions depending upon the eligibility of the individual making application. The Social Security Number Card bears a Social Security Number; shows the name of the person whose record is identified by that SSN; and contains a space for

the person's signature.

6. As noted, Defendant is a native and citizen of Brazil and, according to records maintained by Immigration and Customs Enforcement, the defendant is not present legally in the United States.

7. As an alien illegally present in the United States, the Defendant was not entitled to receive a Social Security Account number card.

8. On January 9, 2002, Defendant applied for a social security account number card. Defendant falsely represented on the application, known as an SS-5, that he was a legal alien permitted to work in the United States, knowing that, in truth and in fact, Defendant was not here legally nor was he granted permission to work.³

9. As a result of providing false information, Defendant received social security account number 034-84-7931.

10. The Massachusetts Registry of Motor Vehicles ("RMV")

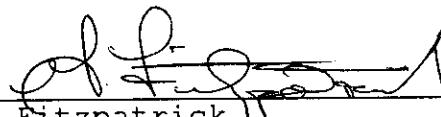
³Defendant's SS-5 application was processed by former SSA employee Jesse Rocha. On September 8, 2003, Jesse Rocha pled guilty to conspiracy to commit fraud in connection with identification documents in violation of Title 18, United States Code Section 1028(f); conspiracy to commit offenses against the United States in violation of 18 U.S.C. §371; conspiracy to launder monetary instruments in violation of 18 U.S.C. §1956(h) and fraud and misuse of documents in violation of 18 U.S.C. §1546(a). During his plea colloquy, Rocha admitted to processing and approving over 1700 applications for SSNCs for illegal aliens during the period from April of 2000 until December of 2002. See 02-10405-GAO.

requires that an individual applying for a driver's license present proof of identification such as a valid social security account number.

11. On May 22, 2002, Defendant applied for a Massachusetts driver's license. On the application, Defendant used the SSN he fraudulently obtained by providing the SSN to the RMV. As a result, a Massachusetts driver's license was issued to Defendant.

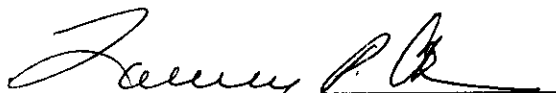
Based upon the foregoing information, I believe there is probable cause to believe that on or about May 22, 2002, Defendant (1) having been denied admission, excluded, deported and removed while an order of exclusion , deportation or removal was outstanding, thereafter, was found in the United States without having received the express consent of the United States Attorney General prior to March 1, 2003 or the Secretary of the Department of Homeland Security subsequent to that date, in violation of 8 U.S.C. §1326(a); and (2) did willfully, knowingly, and with intent to deceive, use a Social security account number, assigned by the Commissioner of Social Security on the basis of the false information furnished to the Commissioner of Social Security by the defendant and other persons on the defendant's

behalf, to apply for and to obtain a Massachusetts driver's
license in violation of Title 42, U.S.C. §408(a)(7)(A).



Glen Fitzpatrick
Special Agent
Immigration and Customs Enforcement

Subscribed and sworn to before me this 30th day of August, 2004



LAWRENCE P. COHEN
UNITED STATES MAGISTRATE JUDGE

JS 45 (5/97) - (Revised USAO MA 1/15/04)

Criminal Case Cover Sheet**U.S. District Court - District of Massachusetts**Place of Offense: _____ Category No. II Investigating Agency ICE/SSACity Fall Rivers Related Case Information:County Bristol Superseding Ind./ Inf. _____ Case No. _____
Same Defendant _____ New Defendant _____
Magistrate Judge Case Number _____
Search Warrant Case Number _____
R 20/R 40 from District of _____**Defendant Information:**Defendant Name NIVALDO ALVES DESOUZA Juvenile ☐ Yes ☒ No

Alias Name _____

Address _____

Birth date (Year only): 1977 SSN (last 4 #): 7931 Sex M Race: Hispanic Nationality: BRAZILIAN

Defense Counsel if known: _____ Address: _____

Bar Number: _____

U.S. Attorney Information:AUSA Nadine Pellegrini Bar Number if applicable 545606Interpreter: ☒ Yes ☐ No List language and/or dialect: PortugueseMatter to be SEALED: ☐ Yes ☒ No☒ Warrant Requested☐ Regular Process☐ In Custody**Location Status:**

Arrest Date: _____

☐ Already in Federal Custody as _____ in _____☐ Already in State Custody _____ ☐ Serving Sentence ☐ Awaiting Trial☐ On Pretrial Release: Ordered by _____ on _____Charging Document: ☒ Complaint ☐ Information ☐ IndictmentTotal # of Counts: ☐ Petty _____ ☐ Misdemeanor _____ ☒ Felony 2

Continue on Page 2 for Entry of U.S.C. Citations

☒ I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.Date: 8/31/04Signature of AUSA: Nadine Pellegrini

JS 45 (5/97) - (Revised USAO MA 3/25/02) Page 2 of 2 or Reverse

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant NIVALDO ALVES DESOUZA

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>8 USC §1326(a)</u>	<u>Illegal Re-Entry</u>	<u>1</u>
Set 2	<u>42 USC §408(a)(7)A)</u>	<u>Misuse of Social Security Number</u>	<u>1</u>
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: